

SEA 29420 / Summons Iss.



09-CV-01401-CMP

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON

(Seattle)

C09 1401 MJP

LAUGHING RABBIT, INC., an Oregon
corporation,

Civil Action No.

Plaintiff,

COMPLAINT FOR PATENT AND
TRADEMARK INFRINGEMENT AND
UNFAIR COMPETITION

v.

SAMANTHA STEVER d/b/a
RABBITLIGHTS.COM,

Defendant.

Plaintiff, Laughing Rabbit, Inc., doing business as LRI (hereinafter "LRI"), for its complaint against Defendant Samantha Stever doing business as "www.rabbitlights.com" or "Samantha Rabbit" (hereinafter "Stever" or "rabbitlights") alleges as follows:

THE PARTIES

1. Plaintiff LRI is a corporation of the State of Oregon, having a business address of 20448 Highway 36, Blachly, Oregon 97412.

2. On information and belief, Defendant Samantha Stever is an individual having a business address of 17200 Newhope Street, Unit 33B, Fountain Valley, California 92708.

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COMPLAINT FOR PATENT AND TRADEMARK
INFRINGEMENT AND UNFAIR COMPETITION - 1

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1 3. On information and belief, Defendant Samantha Stever occasionally does
2 business under the fictitious names "Samantha Rabbit" and/or "Sally Stevers."

3 4. On information and belief, Defendant Samantha Stever is also doing business
4 under the fictitious name "www.plurlight.com."

5 **JURISDICTION AND VENUE**

6 5. This civil action arises under the design patent laws of the United States, 35
7 U.S.C. §§ 271, 281, 283, 284, 285, 289; the federal unfair competition laws of the United States,
8 15 U.S.C. § 1125(a) [Lanham Act § 43(a)]; The Federal Trademark Laws of the United States;
9 15 U.S.C. § 1114 [Lanham Act § 32]; and under the Washington State Consumer Protection Act
10 R.C.W. 19.86.020, *et seq.* Thus, this Court has jurisdiction of this civil action under 28 U.S.C.
11 §§ 1338(a) and 1338(b) and supplemental jurisdiction under 28 U.S.C. § 1367(a)

12 6. Venue with respect to the Defendant is properly laid in the United States District
13 Court for the Western District of Washington pursuant to 28 U.S.C. § 1391(b)(1) as well as
14 under 28 U.S.C. § 1400(b) because on information and belief the Defendant resides in the
15 Western District of Washington within the meaning of 28 U.S.C. § 1397(c) and is doing business
16 therein and/or is an individual having committed acts of infringement and having a regular and
17 established place of business within this judicial district.

18 **FACTS COMMON TO ALL COUNTS**

19 7. LRI is a manufacturer and wholesale distributor of specialty lighting products
20 including the light emitting diode (hereinafter "LED") flashlights shown on page 3 of Exhibit A
21 attached hereto, and herein referred to as the "Photon Micro-Light[®]" or Photon[®] I, II, and III
22 products.

23 8. LRI has since at least as early as 1994 made, sold and transported in interstate
24 commerce, and throughout the State of Washington, over one million of its Photon[®] products
25 shown on page 3 of Exhibit A attached hereto. LRI's customers for these products include
26 Recreational Equipment, Inc., Army-Air Force Exchanges, Meijers, Sport Chalet, L.L. Bean,

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1 Q.V.C. and other national retailers. LRI's Photon[®] products are also available online through
2 "www.photolight.com."

3 9. LRI's Photon[®] product configuration shown in Exhibit A is primarily non-
4 functional and visually distinctive, is prominently displayed to LRI's customers and to the
5 purchasing public through packaging shown in Exhibit B attached hereto, and is recognized by
6 LRI's customers as an indicator of source. LRI's use of the Photon[®] design has been exclusive
7 and continuous and has resulted in that product configuration having acquired a secondary
8 source-indicating significance with LRI's customers. LRI has extensively advertised the
9 Photon[®] configuration product configuration to its customers.

10 10. On information and belief, Defendant Samantha Stever is a retail distributor of a
11 variety of consumer products including LED flashlights.

12 11. On information and belief, Defendant Samantha Stever has since at least as early
13 as August 27, 2008 offered to sell LED flashlights substantially identical in appearance to that
14 shown in Exhibit C attached hereto to the public at www.rabbitlights.com. Exhibit C is a true
15 and accurate copy of photographs of the products offered for sale by and distributed by
16 Defendant Samantha Stever. The Defendant's product shown in Exhibit C is substantially
17 identical in external, nonfunctional appearance to LRI's Photon[®] products shown in Exhibit A
18 attached hereto.

19 12. On information and belief, Defendant Samantha Stever has been engaged in the
20 retail sale of LED flashlights shown in Exhibit C attached hereto in this Judicial District and may
21 still be selling such products.

22 13. Defendant Samantha Stever was placed on notice of LRI's rights, by letter dated
23 September 24, 2008, a copy of which is attached hereto as Exhibit D. On information and belief,
24 Defendant Samantha Stever continued to sell the accused product thereafter.
25
26

1 **CLAIM FOR RELIEF, COUNT I**

2 **Violation of Consumer Protection Act**

3 14. LRI repeats and realleges each and every allegation of paragraphs 1 - 13 as if
4 recited herein.

5 15. The above described acts of Defendant Samantha Stever, constitute an unfair or
6 deceptive act or practice and an unfair method of competition in the conduct of trade or
7 commerce in violation of R.C.W. 19.86.020 *et seq.* that have infringed LRI's common law
8 trademark rights and thereby injured LRI in its business and property.

9 16. Defendant's aforesaid acts have been knowing, willful and without Plaintiff's
10 permission and have been intended to trade on LRI's goodwill in the State of Washington.

11 **CLAIM FOR RELIEF, COUNT II**

12 **Federal Unfair Competition**

13 17. LRI repeats and realleges each and every allegation of paragraphs 1 through 16 as
14 if recited herein.

15 18. Defendant's aforesaid product identified in Exhibit C is a false designation of
16 origin, which is likely to confuse the public into believing that there is an affiliation, connection
17 or association between the source of the Defendant's aforesaid product, and the source of LRI's
18 products shown in Exhibit A.

19 19. LRI is likely to be damaged by such confusion as to affiliation, connection or
20 association of the type described.

21 20. The Defendant's aforesaid acts have been knowing, willful and without LRI's
22 prior knowledge or consent and are therefore a violation of the Plaintiff's rights under 15 U.S.C.
23 § 1125(a) [§ 43(a) of the Lanham Act].
24
25
26

CLAIM FOR RELIEF, COUNT III

Design Patent Infringement

21. LRI repeats and realleges each and every allegation of paragraphs 1 – 20 as if recited herein.

22. David Allen is the owner of United States Design Patent No. Des. 375,372 S (hereinafter the “’372 Patent”) issued on November 5, 1996 entitled “Pocket Flashlight”. A true and accurate copy of said patent is attached hereto as Exhibit E. LRI is the exclusive licensee of Mr. Allen’s rights under the ’372 Patent including the exclusive right to enforce that patent in a civil action.

23. Defendant Samantha Stever was provided with a copy of the ’372 Patent as an attachment to a letter dated September 24, 2008. A true and accurate copy of that letter is attached hereto as Exhibit D.

24. LRI’s “Photon[®]” products and/or packaging have been marked with the legend “patented Des. 375,372” substantially at all times since the issuance of the application which matured into the ’372 Patent. At no time since the issuance of said patent has LRI distributed its Photon[®] products without the appropriate patent number.

25. Defendant Samantha Stever has directly infringed and induced the infringement by others of the ’372 Patent by importing, selling and offering to sell in and into the United States plastic LED flashlights shown in Exhibit C appended hereto, and may still be infringing the ’372 Patent. Defendant’s product shown in Exhibit C literally infringes the ’372 Patent and is legally equivalent to the design claimed in the ’372 Patent.

26. By reason of said acts by Defendant, LRI has been and may continue to be seriously damaged and irreparably harmed unless the Defendant is enjoined by this Court from the actions complained of herein, preliminarily and permanently, and thus LRI is without adequate remedy at law.

1 27. Defendant's aforesaid acts are without the prior knowledge, consent or permission
2 of LRI.

3 28. LRI is entitled to and therefore demands damages, costs and attorney's fees as
4 allowable under 35 U.S.C. §§ 284, 285 and 289, including a trebling of any award.

5 29. This is an exceptional case for purposes of awarding monetary damages, costs and
6 attorney's fees.

7
8 **CLAIM FOR RELIEF, COUNT IV**

9 **Registered Trademark Infringement**

10 30. LRI repeats and realleges each and every allegation of paragraphs 1 through 29 as
11 if recited herein.

12 31. Since at least as early as 1994, LRI has distributed its Photon[®] brand LED
13 flashlights substantially in the configuration shown on page 3 of Exhibit A. LRI has distributed
14 more than one million of its Photon[®] products throughout the United States. LRI's Photon[®]
15 product configuration is primarily non-functional.

16 32. David Allen has applied for registration of his trademark in the Photon[®] product
17 configuration in compliance with 15 U.S.C. § 1051(a) [Lanham Act § 1(a)] and was granted U.S.
18 trademark registration No. 2,791,033 on December 9, 2003. A true and accurate copy of Mr.
19 Allen's trademark registration is attached hereto as Exhibit F. Plaintiff LRI is the exclusive
20 licensee of Mr. Allen's rights under the '033 trademark registration including the exclusive right
21 to enforce the registration by way of civil action.

22 33. On information and belief, the Defendant Samantha Stever provided said
23 registered product configuration to others not in privity with LRI for the purpose of duplicating
24 said configuration as shown in Exhibit C attached hereto for resale by Defendant Samantha
25 Stever so as to confuse the relevant purchasing public as to the source, sponsorship or affiliation
26 of Defendant's LED flashlight product with the source, sponsorship or affiliation of LRI's

1 aforesaid products and has offered for sale and sold said configuration in commerce regulated by
2 Congress.

3 34. Defendant's aforesaid acts were without the prior knowledge, permission or
4 consent of LRI and therefore violate LRI's exclusive rights under 15 U.S.C. § 1115.

5 35. In accordance with 15 U.S.C. §§ 1116, 1117, LRI is entitled to an injunction
6 against further infringement and an award for the actual damages it has suffered and all profits,
7 gains and advantages derived by the Defendant as a result of its infringement of LRI's rights
8 under the registered trademark.

9 **PRAYER FOR RELIEF**

10 WHEREFORE, Plaintiff prays for the entry of a judgment by this Court against the
11 Defendant providing:

12 (a) That the Defendant has violated the Washington State Consumer Protection Act,
13 R.C.W. 19.86.020 et seq.;


14 (b) For an award of damages, together with interest, to compensate the Plaintiff for
15 the Defendant's past acts of unfair competition and misidentification of origin, and that such an
16 award be trebled, and for an award to Plaintiff of all of its costs and attorney's fees with respect
17 thereto in accordance with R.C.W. 19.86.090;

18 (c) That the Defendant has violated § 43(a) of the Lanham Act;

19 (d) That the Defendant, its respective agents, servants, employees, attorneys and all
20 other persons in active concert or in participation with each Defendant be preliminarily and
21 permanently enjoined and restrained from making any false designation of origin which is likely
22 to confuse the public, or cause mistake, or to deceive the public as to believing that there is an
23 affiliation, connection of association or the Defendant with the Plaintiff by virtue of similarities
24 between the Defendant's LED flashlights and the Plaintiff's LED flashlights;

25 (e) For an award of damages in accordance with 15 U.S.C. § 1117(a) including all of
26 the Defendant's profits, damages sustained by the Plaintiff, and the costs of the action including

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1 a trebling of such damages and that the Court determine that this is an exceptional case and
2 award the Plaintiff its reasonable attorney's fees;

3 (f) That the Defendant has infringed and/or induced infringement of United States
4 Letters Patent No. Des. 375,372;

5 (g) That the Defendant, its respective agents, servants, employees, attorneys, and all
6 other persons in active concert or in participation with the Defendant, by preliminarily and
7 permanently enjoined and restrained from importing, making, using, selling or offering to sell
8 any LED flashlight having an external appearance which infringes any claim of the asserted
9 patent.

10 (h) For an award of damages, together with interest, to compensate Plaintiff for the
11 past infringement by the Defendant of the asserted patent, and that such award be trebled, and for
12 an award to Plaintiff of all of its costs and reasonable attorney's fees with respect thereto in
13 accordance with 35 U.S.C. §§ 284 and 285, and for all of the profits made by the Defendant as a
14 result of its infringing activity in accordance with 35 U.S.C. § 289;

15 (i) That the Defendant has infringed Plaintiff's registered trademark in its Photon[®]
16 product configuration.

17 (j) That the Defendant, its respective agents, servants, employees, attorneys, and all
18 other persons in active concert or in participation with the Defendant, by preliminarily and
19 permanently enjoined and restrained from selling or offering to sell in commerce Defendant's
20 LED flashlight product shown in Exhibit C and substantially identical products and that this
21 Court issue an order pursuant to 15 U.S.C. § 1116 requiring the Defendant to produce all LED
22 flashlights made or used in violation of Plaintiff's exclusive trademark, and of all molds or other
23 articles by means of which such LED flashlights may be reproduced for destruction and file and
24 serve a report in writing under oath setting forth in detail the manner and form in which the
25 defendant has complied with the injunction;


1 (k) For an award of the Plaintiff's actual damages and the Defendant's profits in
2 accordance with 15 U.S.C. § 1117, together with interest as this Court considers just to
3 compensate Plaintiff for the past infringement of its trademark in its Photon® product
4 configuration and for an award to Plaintiff of all its costs with respect thereto in accordance with
5 15 U.S.C. § 1117; and

6 (l) For other and further relief as is provided by law and that this Court deems just
7 and equitable.

8 Respectfully submitted,

9 BLACK LOWE & GRAHAM^{PLLC}

10
11 Dated October 1, 2009

12 By: 
13 Michael J. Folise, WSBA #15,276
14 701 Fifth Avenue, Suite 4800
15 Seattle, Washington 98104
16 Phone (206) 381-3300
17 Fax (206) 381-3301

18 Dated _____

19 By: _____
20 Lawrence D. Graham, WSBA #25,402
21 701 Fifth Avenue, Suite 4800
22 Seattle, Washington 98104
23 Phone (206) 381-3300
24 Fax (206) 381-3301

25 Counsel for Plaintiff

26 S:\Clients\LAUG6-Litigation\6-1833 (SAMANTHA STEVER)\COMPLAINT.doc

EXHIBIT A

LED Keychain Flashlights • Flashing LED Lights

PHOTON Light.com

Ordering • Shoppi

Home of the
Photon Micro-Light®

The "brightest-for-its-size personal flashlight"™

Special Offer



It's no wonder the hands-free Photon clip I quickly become one of our most popular accessories. With the strong clip, adjustable pivot joint, and integrated magnets, the hands-free clip adds plenty of versatility to any Photon light.

Order now and get a FREE hands-free clip (\$4.95 value) w/ every Photon II or Photon 3.

*Offer ends Thursday, August 25th

Own the Keychain Flashlight Used By NASA, the US Secret Service, and the US N

You don't have to be a top-secret government agent or military official to benefit from LED keychain flashlights. In addition to NASA, the Secret Service, and the military, you' Light is used by fishermen, rescue workers, hikers, campers, techies, partygoers, and ti in the dark on their way to the bathroom. With a Halogen or Xenon flashlight, the flame lights can last up to ten times longer! Simply put... we think everybody can benefit from Photon LED keychain flashlight. The Photon Micro 3 and our new Photon Freedom Micro LED lights for emergency signaling.

The original Photon Micro-Light LED key chain flashlight revolutionized the flashlight inc released in 1995, and has been credited with creating a whole new market for small, bri flashlights. Today, the Photon Micro-Light is just one product in an entire family of prem including mini LED flashlights and larger hand-held LED headlamps. Photon Micro-Ligh popular LED key chain flashlights in the world with over a million satisfied users.

FREE!

Sales/Customer Service:
1-877-584-6698
(M-F) 9 a.m. - 5 p.m. PST



Photon Freedom® Micro

- Now 2X brighter!*

Simple One-Button Operation



Electronic On/Off
Adjustable Brightness
Safety Strobes, Signaling Mode © PhotonLight.com

Introducing the new Photon Freedom Micro: the easiest to use, mo powerful, full featured micro torch light available. Intuitive single-butto

<http://www.photonlight.com/>

7/25/2005



[site map](#)

operation provides quick, easy access to a full range of features including fully adjustable brightness and multiple strobe and signaling flashing LED lights. Includes a free hands-free Photon Clip! Available in 10 different colors. Prices start at only \$19.95 ea.

***The white beam Freedom Micro & Photon II are now 100% brighter making these lights a full 2X brighter than any other micro-light on the market! In stock and ready to ship - Order today!**

[Click here for more info](#)

Photon: The "Brightest-for-Its-Size Personal LED Flashlight"™

In addition to being small, convenient, helpful, and downright fun, you'll see firsthand flashlights have earned their title. Only the very brightest LEDs for each color are used. assurance (and the illumination power) to maneuver your way through a dark parking garage, team of your whereabouts, and anything in between.

"...He slammed into the other side at an unknown speed and immediately snapped unconscious and breathing but unable to move, waiting to die as he could see for a snow-cat go by, too far away to hear his cries for help ...Our most esteemed guest summit of North Sheep Mountain 12,500 ASL when he sees a blinking light lighthouse' ...Had he not had your light he surely would have perished."

[Click here to read more testimonials](#)

More Than "Just" LED Keychain Flashlights

Yes, they are LED flashlights. Yes, they are keychains. But in addition to that, you'll find keychain lights are also rugged, compact, innovative, practical, and of the highest quality.

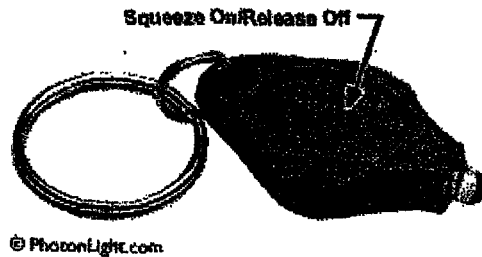
What could be better than a vast selection of keychain flashlights including inventive

- Adjustable brightness level for a wide range of uses.
- Safety strobe functions that can literally save your life.
- Single-button operation - simple and intuitive.
- Water-resistant case - great for outdoor activities.
- Glass-filled polyurethane case for the ultimate in durability.
- On/off switch for hands-free convenience.
- Up to 10 different beam colors including infrared and ultraviolet for special purposes.

How about **free shipping** within the U.S.A., generous **quantity discounts**, a **lifetime** exceptional customer service for our LED lights? You'll receive all that, too. If you are a carrier carrying our key chain lights please follow our LED flashlight wholesale link.

Photon Micro-Light led key chain flashlights are so affordable you'll want several for yourself and your friends and family members. With their nearly universal appeal, Photon LED flashlights are perfect gifts. Browse our entire selection now.

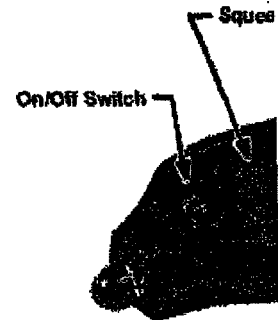
Photon Micro-Light®



An updated, improved version of the original Photon Micro-Light, the Photon I now features a water-resistant case and a new battery compartment which allows for quick, easy battery changes. Glass-filled polyurethane case is incredibly tough and keeps your light looking brand new even after years of use. Use it as a keychain or a **LED pocket light**. Available in 5 different beam colors. Prices start at \$9.95 ea.

[Click here for more info](#)

Photon Micro - Now 2X bri

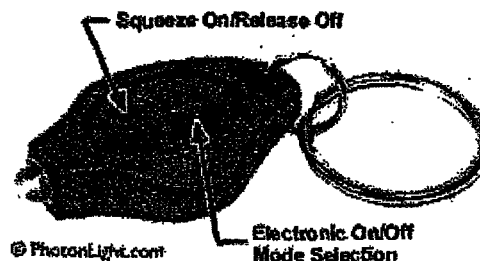


The popular Photon Micro convenient **on/off switch** for addition to the standard squeeze construction stands up to the Available in 9 different beam colors. \$15.95 ea.

***The white beam Photon II now 100% brighter, making brighter than any other mi market! In stock and ready today!**

[Click here for](#)

Photon Micro-Light® 3



If you're looking for the light that has it all, this is it. Easy to use multi-function squeeze button allows selection of 3 levels of brightness, 3 strobe flashing LED lights for signaling including S.O.S. emergency strobe, & a convenient auto-shutoff mode. Water resistant case with quick, easy battery changes. Available in 10 different beam colors. Prices start at \$17.95 ea.

Flexbeam Light



The Flexbeam combines Light II with a versatile, flexible, handy **flexible LED light** that about anywhere to provide h of your work area. \$24.95 ea

[Click here for](#)

[Click here for more info](#)

Photon Freedom Fusion®



@ PhotonLight.com

This compact, multifunction light can be used as a **LED headlamp**, handheld **flashlight**, table lamp, or clip-on safety light. It's a good alternative to a **filament dependent Xenon flashlight**. Full range brightness control plus 5 safety features. Optional bike mount bracket available for use as a bicycle LED headlight or taillight. Available in 5 different beam colors. Prices start at \$81.95 ea.

[Click here for more info](#)

Micro-Light Swiss Army Knives



@ PhotonLight.com

These genuine Wenger Swiss Army knives feature a built-in **white LED flashlight** designed by David Allen, inventor of the Photon Micro-Lights. Prices start at \$29.95 ea.

[Click here for more info](#)

Realtree Camouflag



Camouflage versions of the Photon Fusion are n for hunters and outdoor enth

[Click here for](#)

Rav'n® Rave LEI

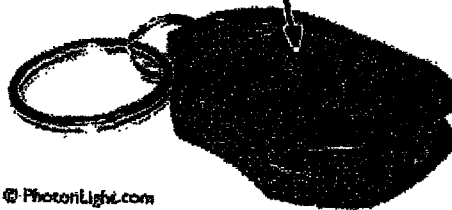


A fun party light which trac colored ribbons of light with i for parties, dancing, and just LED light effect is truly incre seen in action to fully apprec

[Click here for](#)

X-Light® Micro-Light

Electronic On/Off

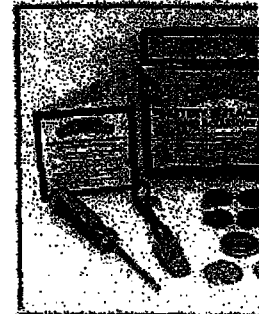


© PhotonLight.com

A low cost alternative to the premium line of Photon Micro-Lights, the X-Light provides a reliable keychain light with a convenient electronic on/off switch at a price that simply can't be beat. Available in 4 different beam colors, plus an exciting "X-Color" rainbow version. Prices start at \$7.95 ea.

[Click here for more info](#)

Accessories & Repla



Everything you need to mai
Photon led keyc

[Click here for](#)

**For a full list of available Photon Accessories, batteries, & replacement
See the main page of our [LED keychain lights](#).
Interested in reselling? See our [LED flashlight wholesale sec](#)**

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[LED Party Light](#) | [X-Lights](#) | [Accessories](#) | [Clearance](#)

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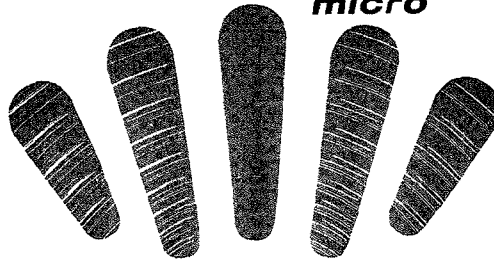
EXHIBIT B



"THE LEADER
IN MICRO LIGHT
TECHNOLOGY"

PERSONAL SAFETY FLASHLIGHT

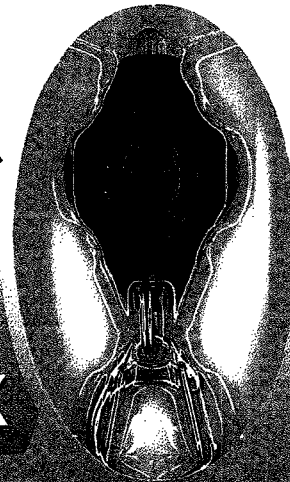
PHOTON
Freedom
micro™



NEW!

**100%
BRIGHTER**

**TO
THE
MAX**



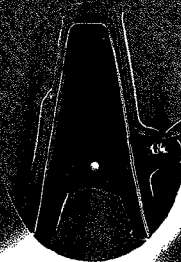
TRY ME
In Package for
ON/OFF and
Brightness
Control

Indestructible
Water Resistant
Case

Original *Daniel Allen* Design™

FREE
PHOTON CLIP
& NECKLACE
Included

*\$4.99 Value



NT B

EXHIBIT C

Rabbit Lights
Best Orbit Light Shows and Party Supplies
From Raver to Raver



Nocturnal was AWESOME! It was nice meeting so many people -- look for more face lightshows at Lovefest, Lovefest Afterparty, Fuzzy Festival, Monster Massive, and many announced!

NEW PRODUCTS: Modified INOVA Microlights in NEVER BEFORE SEEN COLORS!



Current promo: FREE GIFT WITH EVERY ORDER compliments of RABBIT! Also, include your PLURSPACE, GenXGlow username and get **ANOTHER FREE GIFT WITH YOUR ORDER!** See News/Promotions for more details.

Find a lower price anywhere else? I'll match it. I already have the lowest prices, but if you find one cheaper, just tell for you even lower.

Welcome to RabbitLights.com! The best place to get your glow on. RabbitLights is a place to go when you want to get supplies from raver to raver -- every order is made with love and PLUR. If you don't believe me, try going to PLUR

I sell **LED Keychain Lights, Orbit Light Shows**, and other rave toys at prices lower than any other provider stuff that I've tried and used and that I take with me to every party, so it's only good stuff. I rave just like you, **lot** of Quality Assurance on everything I sell and everything I make. Also, free shipping and free hugs are included order.

Need it fast? Choose Priority shipping (\$6.00). See it in 2-3 days! Just select "flat rate" at checkout. Otherwise, usually done the next day and shouldn't take more than 5 days to get to you in most cases.

Unsure? Have questions? Message me on AIM at **AskRabbitLights**, GMail Messenger at **rabbitlights@gm** Messenger at **AskRabbitLights** or simply email me at **rabbit@rabbitlights.com**.

If you are interested in **Orbit Light Shows**, please see the catalog for pre-made Orbits or, if you want to make my instructions on How to Make an Orbit Light Show. All orbits I sell are pre-made, and are ready to play with st envelope.

If you want to build your own, I sell all materials needed for orbits so you can make it a project.

Also, if you don't want to buy my lights off this website, check out my eBay Store! I have all the same things, website always has special promotions available.

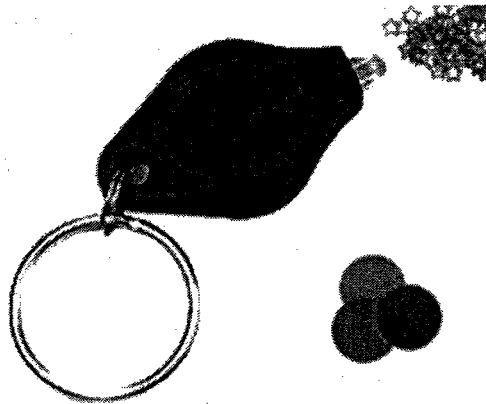
MISSION STATEMENT -- WHO I AM:

RabbitLights.com is about being a raver loving her fellow ravers. My concern isn't really making money. I go to you. I dance, I string, I glow, and I party just like you. I don't promote. I never hand out business cards, or try shit, unless they seriously ask me. It's not about money. It's about peace, love, unity, and respect. I'm not here I'm just trying to make my way through college while bringing inexpensive stuff to people I love.

If there is a good trance party in California, I'm there. I am new to the area, but I used to fly here for parties. took all my money; so I just moved here in pursuit of happiness. I love to dance, I love to experience music. I am an artist. You've probably gotten a light show from me, and if you haven't, you probably should sometime.

For me, raving isn't something I can experience alone. It's nice to roll and get lightshows and sit and watch, but I experience it unless I'm experiencing it with somebody else. For this reason, I bring 15-20 pairs of prismatic glow sticks, and every light show apparatus I'd ever need. I want to show you a good time. Making other people happy. So, find me. Take my glasses. Watch my light shows. Let me make you smile.

<3 AIM ME! AskRabbitLights or pen73616d **PLUR!** <3



Please note that none of the lights I sell are Photon brand microlights, and that RabbitLights.com is not affiliated with the Photon brand or its parent company, LRI. If you want high quality lights with intelligent and multi-function capability, please visit PhotonLight.com. Thank you.

New Products For September



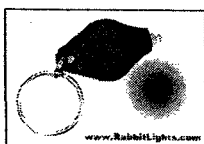
2 Two Original Strobe FX Rave Toy
\$47.50



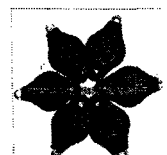
Orbit Light Show - Four Lights
\$21.80



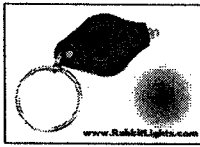
LED Keychain Light
\$4.30



Prismatic Laser Rave Glasses

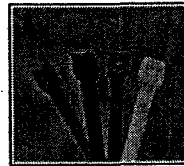


LED Keychain Light - Blue
\$4.30



LED Keychain Light - Green
\$4.30

\$2.50



Set of 10 18LB Mini Zip Ties
\$1.80

Orbit Light Show - S
\$31.50



2 7-Inch 6-Mode LED
Changing Poi Sticks
\$5.95

Your IP Address is: 66.213.200.186
Copyright © 2008 Rabbit Lights

EXHIBIT D

Brenda Ruthrauff

From: Brenda Ruthrauff
Sent: Tuesday, June 23, 2009 2:46 PM
To: 'admin@rabbitlights.com'
Subject: Infringement of L.R.I.'s Patent and Trademark Rights
Attachments: ATTACHMENTS 1-A through 1-C.pdf; LAUG-6-1833 COMPLAINT.pdf; LAUG-6-1833 SS L01.doc

Dear Ms. Stever:

Attached please find the following from our office:

1. Demand letter and attachments
2. Complaint

Brenda Ruthrauff
International Intellectual Property Paralegal to Michael J. Folise, Esq.
Black Lowe & Graham PLLC
701 Fifth Avenue, Suite 4800
Seattle, WA 98104
Tel. 206.381.3300
Fax 206.381.3301

6/23/2009



BLACK LOWE & GRAHAM^{PLLC}
Intellectual Property Attorneys

701 Fifth Avenue, Suite 4800
Seattle, Washington 98104
206.381.3300 • F: 206.381.3301
blacklaw.com

August 18, 2009

Ms. Samantha Stever
d/b/a Rabbit Lights
Apartment 33B
17200 Newhope Street
Fountain Valley, CA 92708

Re: Infringement of Laughing Rabbit, Inc.'s Patent and Trademark Rights
Our Reference No.: LAUG-6-1833

Dear Ms. Stever:

As you know, our client Laughing Rabbit, Inc. (hereinafter "L.R.I.") initially contacted you in August 2008 regarding your sale of counterfeit products on your website www.rabbitlights.com. On September 24, 2008 our office corresponded with your attorney, Robert Vitt, Esq. regarding the infringing products sold by your company, "rabbitlights.com" under the designation "LED keychain lights." Although Mr. Vitt advised us that you would be cooperating with respect to an amicable resolution to this matter, we have not received any of the specifically requested information including:

- (a) the total number of LED Keychain Lights products sold utilizing the counterfeit design;
- (b) the gross receipts attributable to the sales of such products;
- (c) the remaining stock on hand of any such products; and
- (d) the full identity of any such manufacturer and/or importer from whom you have purchased any of the accused products.

Furthermore, our reminder letters dated October 27, 2008 and December 1, 2008 to Mr. Vitt have gone unanswered. Mr. Vitt recently advised us that he no longer represents you. Unfortunately, you appear to continue to sell the offending products. See the attachments hereto. We have therefore been authorized to file and serve the enclosed Complaint against you for patent and trademark infringement and other forms of unfair competition. Please note that due to the willful nature of the infringement since our September 24, 2008 demand letter the United States District Court is likely to award L.R.I. its reasonable attorneys fees and costs in this matter. Should you desire to avoid this result, we recommend that you fully comply with the requests set forth in our September 24, 2008 letter. Finally, we must bring to your attention various communications you appear to be involved with on the website www.ravelinks.com. You appear to be involved in discussions regarding your lack of cooperation with L.R.I. and further regarding spoliation of evidence regarding this matter. (See Attachments 1-A, 1-B, and 1-C.) We are confident that in accordance with Mr. Vitt's professional obligations to you, he has


Ms. Samantha Stever
August 18, 2009
Page 2

advised you that you are under a duty to preserve evidence which you know, or reasonably should know is relevant to future litigation. *National Association of Radiation Survivors v. Tumage*, 115 F.R.D. 543, 556-57 (N.D. Cal. 1987). See also *In Re Napster, Inc.*, Copyright Litigation 462 F. Supp. 2d. 1060, 1068 (N.D. Cal. 2006). Hopefully, you have been advised that any such spoliation will result in sanctions including potentially entry of an adverse judgment, preclusion of evidence and adverse spoliation inference and an award of costs. *Computer Associates International v. Am Fundaare, Inc.*, 133 F.R.D. 166, 170 (D. Colo. 1990).

Please advise us immediately if you intend to comply with our demands.

Very truly yours,

BLACK LOWE & GRAHAM^{PLLC}


Michael J. Folise

MJF/bjr

cc: Laughing Rabbit, Inc.

Enclosures:

Summons

Complaint for Patent and Trademark Infringement and Unfair Competition

Civil Cover Sheet

Attachments:

1-A

1-B

1-C

S:\Clients\LAUG\6-Litigation\6-1833 (SALLY STEVER)\LAUG-6-1833 SS L01.doc

UNITED STATES DISTRICT COURT

District of _____

LAUGHING RABBIT, INC., an Oregon corporation,
Plaintiff, V.

SUMMONS IN A CIVIL CASE

SAMANTHA STEVER, d/b/a Rabbit Lights

CASE NUMBER: _____

TO: (Name and address of Defendant)

Samantha Stever
d/b/a www.rabbitlights.com

YOU ARE HEREBY SUMMONED and required to serve on PLAINTIFF'S ATTORNEY (name and address)

Michael J. Folise, Esq.
Black Lowe & Graham PLLC
701 Fifth Avenue, Suite 4800
Seattle, WA 98104

an answer to the complaint which is served on you with this summons, within 20 days after service of this summons on you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. Any answer that you serve on the parties to this action must be filed with the Clerk of this Court within a reasonable period of time after service.

CLERK_____
DATE_____
(By) DEPUTY CLERK

CIVIL COVER SHEET

IS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by the rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I) PLAINTIFFS

LAUGHING RABBIT, INC., an Oregon corporation,

County of Residence of First Listed Plaintiff Lane
(EXCEPT IN U.S. PLAINTIFF CASES)

Attorney's (Firm Name, Address, and Telephone Number)
Michael J. Folise, Esq., Black Lowe & Graham, PLLC,
701 Fifth Avenue, Ste. 4800, Seattle, WA 98104

DEFENDANTS

SAMANTHA STEVER, d/b/a www.rabbitlight.com

County of Residence of First Listed Defendant Orange
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
LAND INVOLVED.

Attorneys (If Known)

BASIS OF JURISDICTION (Place an "X" in One Box Only)

U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF		PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
<input type="checkbox"/> Insurance <input type="checkbox"/> Marine <input type="checkbox"/> Miller Act <input type="checkbox"/> Negotiable Instrument <input type="checkbox"/> Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> Medicare Act <input type="checkbox"/> Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> Stockholders' Suits <input type="checkbox"/> Other Contracts <input type="checkbox"/> Contract Product Liability <input type="checkbox"/> Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury	PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input checked="" type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> Land Condemnation <input type="checkbox"/> Foreclosure <input type="checkbox"/> Rent Lease & Ejectment <input type="checkbox"/> Torts to Land <input type="checkbox"/> Tort Product Liability <input type="checkbox"/> All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	

ORIGIN

(Place an "X" in One Box Only)

Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

15 U.S.C. 1116 et seq. and 35 U.S.C. 281 et seq.

Brief description of cause:

Complaint for Patent and Trademark Infringement and Unfair Competition

REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No

I. RELATED CASE(S) IF ANY

(See instructions):

JUDGE

DOCKET NUMBER

3 SIGNATURE OF ATTORNEY OF RECORD

OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON

(Seattle)

LAUGHING RABBIT, INC., an Oregon
corporation,

Plaintiff,

v.

SAMANTHA STEVER d/b/a
RABBITLIGHTS.COM,

Defendant.

Civil Action No.

COMPLAINT FOR PATENT AND
TRADEMARK INFRINGEMENT AND
UNFAIR COMPETITION

Plaintiff, Laughing Rabbit, Inc., doing business as LRI (hereinafter "LRI"), for its complaint against Defendant Samantha Stever doing business as "www.rabbitlights.com" or "Samantha Rabbit" (hereinafter "Stever" or "rabbitlights") alleges as follows:

THE PARTIES

1. Plaintiff LRI is a corporation of the State of Oregon, having a business address of 20448 Highway 36, Blachly, Oregon 97412.

2. On information and belief, Defendant Samantha Stever is an individual having a business address of 17200 Newhope Street, Unit 33B, Fountain Valley, California 92708.

COMPLAINT FOR PATENT AND TRADEMARK
INFRINGEMENT AND UNFAIR COMPETITION - 1

COMPLAINT

BLACK LOWE & GRAHAM ^{PLLC}

701 Fifth Avenue, Suite 4800
Seattle, Washington 98104
206.381.3300 • F: 206.381.3301

1 3. On information and belief, Defendant Samantha Stever occasionally does
2 business under the fictitious names "Samantha Rabbit" and/or "Sally Stevers."

3 4. On information and belief, Defendant Samantha Stever is also doing business
4 under the fictitious name "www.plurlight.com."

5 **JURISDICTION AND VENUE**

6 5. This civil action arises under the design patent laws of the United States, 35
7 U.S.C. §§ 271, 281, 283, 284, 285, 289; the federal unfair competition laws of the United States,
8 15 U.S.C. § 1125(a) [Lanham Act § 43(a)]; The Federal Trademark Laws of the United States;
9 15 U.S.C. § 1114 [Lanham Act § 32]; and under the Washington State Consumer Protection Act
10 R.C.W. 19.86.020, *et seq.* Thus, this Court has jurisdiction of this civil action under 28 U.S.C.
11 §§ 1338(a) and 1338(b) and supplemental jurisdiction under 28 U.S.C. § 1367(a)

12 6. Venue with respect to the Defendant is properly laid in the United States District
13 Court for the Western District of Washington pursuant to 28 U.S.C. § 1391(b)(1) as well as
14 under 28 U.S.C. § 1400(b) because on information and belief the Defendant resides in the
15 Western District of Washington within the meaning of 28 U.S.C. § 1397(c) and is doing business
16 therein and/or is an individual having committed acts of infringement and having a regular and
17 established place of business within this judicial district.

18 **FACTS COMMON TO ALL COUNTS**

19 7. LRI is a manufacturer and wholesale distributor of specialty lighting products
20 including the light emitting diode (hereinafter "LED") flashlights shown on page 3 of Exhibit A
21 attached hereto, and herein referred to as the "Photon Micro-Light[®]" or Photon[®] I, II, and III
22 products.

23 8. LRI has since at least as early as 1994 made, sold and transported in interstate
24 commerce, and throughout the State of Washington, over one million of its Photon[®] products
25 shown on page 3 of Exhibit A attached hereto. LRI's customers for these products include
26 Recreational Equipment, Inc., Army-Air Force Exchanges, Meijers, Sport Chalet, L.L. Bean,

1 Q.V.C. and other national retailers. LRI's Photon[®] products are also available online through
2 "www.photolight.com."

3 9. LRI's Photon[®] product configuration shown in Exhibit A is primarily non-
4 functional and visually distinctive, is prominently displayed to LRI's customers and to the
5 purchasing public through packaging shown in Exhibit B attached hereto, and is recognized by
6 LRI's customers as an indicator of source. LRI's use of the Photon[®] design has been exclusive
7 and continuous and has resulted in that product configuration having acquired a secondary
8 source-indicating significance with LRI's customers. LRI has extensively advertised the
9 Photon[®] configuration product configuration to its customers.

10 10. On information and belief, Defendant Samantha Stever is a retail distributor of a
11 variety of consumer products including LED flashlights.

12 11. On information and belief, Defendant Samantha Stever has since at least as early
13 as August 27, 2008 offered to sell LED flashlights substantially identical in appearance to that
14 shown in Exhibit C attached hereto to the public at www.rabbitlights.com. Exhibit C is a true
15 and accurate copy of photographs of the products offered for sale by and distributed by
16 Defendant Samantha Stever. The Defendant's product shown in Exhibit C is substantially
17 identical in external, nonfunctional appearance to LRI's Photon[®] products shown in Exhibit A
18 attached hereto.

19 12. On information and belief, Defendant Samantha Stever has been engaged in the
20 retail sale of LED flashlights shown in Exhibit C attached hereto in this Judicial District and may
21 still be selling such products.

22 13. Defendant Samantha Stever was placed on notice of LRI's rights, by letter dated
23 September 24, 2008, a copy of which is attached hereto as Exhibit D. On information and belief,
24 Defendant Samantha Stever continued to sell the accused product thereafter.
25
26

1 **CLAIM FOR RELIEF, COUNT I**

2 **Violation of Consumer Protection Act**

3 14. LRI repeats and realleges each and every allegation of paragraphs 1 - 13 as if
4 recited herein.

5 15. The above described acts of Defendant Samantha Stever, constitute an unfair or
6 deceptive act or practice and an unfair method of competition in the conduct of trade or
7 commerce in violation of R.C.W. 19.86.020 *et seq.* that have infringed LRI's common law
8 trademark rights and thereby injured LRI in its business and property.

9 16. Defendant's aforesaid acts have been knowing, willful and without Plaintiff's
10 permission and have been intended to trade on LRI's goodwill in the State of Washington.

11 **CLAIM FOR RELIEF, COUNT II**

12 **Federal Unfair Competition**

13 17. LRI repeats and realleges each and every allegation of paragraphs 1 through 16 as
14 if recited herein.

15 18. Defendant's aforesaid product identified in Exhibit C is a false designation of
16 origin, which is likely to confuse the public into believing that there is an affiliation, connection
17 or association between the source of the Defendant's aforesaid product, and the source of LRI's
18 products shown in Exhibit A.

19 19. LRI is likely to be damaged by such confusion as to affiliation, connection or
20 association of the type described.

21 20. The Defendant's aforesaid acts have been knowing, willful and without LRI's
22 prior knowledge or consent and are therefore a violation of the Plaintiff's rights under 15 U.S.C.
23 § 1125(a) [§ 43(a) of the Lanham Act].
24
25
26

CLAIM FOR RELIEF, COUNT III

Design Patent Infringement

21. LRI repeats and realleges each and every allegation of paragraphs 1 – 20 as if recited herein.

22. David Allen is the owner of United States Design Patent No. Des. 375,372 S (hereinafter the “’372 Patent”) issued on November 5, 1996 entitled “Pocket Flashlight”. A true and accurate copy of said patent is attached hereto as Exhibit E. LRI is the exclusive licensee of Mr. Allen’s rights under the ’372 Patent including the exclusive right to enforce that patent in a civil action.

23. Defendant Samantha Stever was provided with a copy of the ’372 Patent as an attachment to a letter dated September 24, 2008. A true and accurate copy of that letter is attached hereto as Exhibit D.

24. LRI’s “Photon[®]” products and/or packaging have been marked with the legend “patented Des. 375,372” substantially at all times since the issuance of the application which matured into the ’372 Patent. At no time since the issuance of said patent has LRI distributed its Photon[®] products without the appropriate patent number.

25. Defendant Samantha Stever has directly infringed and induced the infringement by others of the ’372 Patent by importing, selling and offering to sell in and into the United States plastic LED flashlights shown in Exhibit C appended hereto, and may still be infringing the ’372 Patent. Defendant’s product shown in Exhibit C literally infringes the ’372 Patent and is legally equivalent to the design claimed in the ’372 Patent.

26. By reason of said acts by Defendant, LRI has been and may continue to be seriously damaged and irreparably harmed unless the Defendant is enjoined by this Court from the actions complained of herein, preliminarily and permanently, and thus LRI is without adequate remedy at law.

1 27. Defendant's aforesaid acts are without the prior knowledge, consent or permission
2 of LRI.

3 28. LRI is entitled to and therefore demands damages, costs and attorney's fees as
4 allowable under 35 U.S.C. §§ 284, 285 and 289, including a trebling of any award.

5 29. This is an exceptional case for purposes of awarding monetary damages, costs and
6 attorney's fees.

7
8 **CLAIM FOR RELIEF, COUNT IV**

9 **Registered Trademark Infringement**

10 30. LRI repeats and realleges each and every allegation of paragraphs 1 through 29 as
11 if recited herein.

12 31. Since at least as early as 1994, LRI has distributed its Photon[®] brand LED
13 flashlights substantially in the configuration shown on page 3 of Exhibit A. LRI has distributed
14 more than one million of its Photon[®] products throughout the United States. LRI's Photon[®]
15 product configuration is primarily non-functional.

16 32. David Allen has applied for registration of his trademark in the Photon[®] product
17 configuration in compliance with 15 U.S.C. § 1051(a) [Lanham Act § 1(a)] and was granted U.S.
18 trademark registration No. 2,791,033 on December 9, 2003. A true and accurate copy of Mr.
19 Allen's trademark registration is attached hereto as Exhibit F. Plaintiff LRI is the exclusive
20 licensee of Mr. Allen's rights under the '033 trademark registration including the exclusive right
21 to enforce the registration by way of civil action.

22 33. On information and belief, the Defendant Samantha Stever provided said
23 registered product configuration to others not in privity with LRI for the purpose of duplicating
24 said configuration as shown in Exhibit C attached hereto for resale by Defendant Samantha
25 Stever so as to confuse the relevant purchasing public as to the source, sponsorship or affiliation
26 of Defendant's LED flashlight product with the source, sponsorship or affiliation of LRI's

1 aforesaid products and has offered for sale and sold said configuration in commerce regulated by
2 Congress.

3 34. Defendant's aforesaid acts were without the prior knowledge, permission or
4 consent of LRI and therefore violate LRI's exclusive rights under 15 U.S.C. § 1115.

5 35. In accordance with 15 U.S.C. §§ 1116, 1117, LRI is entitled to an injunction
6 against further infringement and an award for the actual damages it has suffered and all profits,
7 gains and advantages derived by the Defendant as a result of its infringement of LRI's rights
8 under the registered trademark.

9 **PRAYER FOR RELIEF**

10 WHEREFORE, Plaintiff prays for the entry of a judgment by this Court against the
11 Defendant providing:

12 (a) That the Defendant has violated the Washington State Consumer Protection Act,
13 R.C.W. 19.86.020 et seq.;

14 (b) For an award of damages, together with interest, to compensate the Plaintiff for
15 the Defendant's past acts of unfair competition and misidentification of origin, and that such an
16 award be trebled, and for an award to Plaintiff of all of its costs and attorney's fees with respect
17 thereto in accordance with R.C.W. 19.86.090;

18 (c) That the Defendant has violated § 43(a) of the Lanham Act;

19 (d) That the Defendant, its respective agents, servants, employees, attorneys and all
20 other persons in active concert or in participation with each Defendant be preliminarily and
21 permanently enjoined and restrained from making any false designation of origin which is likely
22 to confuse the public, or cause mistake, or to deceive the public as to believing that there is an
23 affiliation, connection of association or the Defendant with the Plaintiff by virtue of similarities
24 between the Defendant's LED flashlights and the Plaintiff's LED flashlights;

25 (e) For an award of damages in accordance with 15 U.S.C. § 1117(a) including all of
26 the Defendant's profits, damages sustained by the Plaintiff, and the costs of the action including

1 a trebling of such damages and that the Court determine that this is an exceptional case and
2 award the Plaintiff its reasonable attorney's fees;

3 (f) That the Defendant has infringed and/or induced infringement of United States
4 Letters Patent No. Des. 375,372;

5 (g) That the Defendant, its respective agents, servants, employees, attorneys, and all
6 other persons in active concert or in participation with the Defendant, by preliminarily and
7 permanently enjoined and restrained from importing, making, using, selling or offering to sell
8 any LED flashlight having an external appearance which infringes any claim of the asserted
9 patent.

10 (h) For an award of damages, together with interest, to compensate Plaintiff for the
11 past infringement by the Defendant of the asserted patent, and that such award be trebled, and for
12 an award to Plaintiff of all of its costs and reasonable attorney's fees with respect thereto in
13 accordance with 35 U.S.C. §§ 284 and 285, and for all of the profits made by the Defendant as a
14 result of its infringing activity in accordance with 35 U.S.C. § 289;

15 (i) That the Defendant has infringed Plaintiff's registered trademark in its Photon[®]
16 product configuration.

17 (j) That the Defendant, its respective agents, servants, employees, attorneys, and all
18 other persons in active concert or in participation with the Defendant, by preliminarily and
19 permanently enjoined and restrained from selling or offering to sell in commerce Defendant's
20 LED flashlight product shown in Exhibit C and substantially identical products and that this
21 Court issue an order pursuant to 15 U.S.C. § 1116 requiring the Defendant to produce all LED
22 flashlights made or used in violation of Plaintiff's exclusive trademark, and of all molds or other
23 articles by means of which such LED flashlights may be reproduced for destruction and file and
24 serve a report in writing under oath setting forth in detail the manner and form in which the
25 defendant has complied with the injunction;
26

1 (k) For an award of the Plaintiff's actual damages and the Defendant's profits in
2 accordance with 15 U.S.C. § 1117, together with interest as this Court considers just to
3 compensate Plaintiff for the past infringement of its trademark in its Photon® product
4 configuration and for an award to Plaintiff of all its costs with respect thereto in accordance with
5 15 U.S.C. § 1117; and

6 (l) For other and further relief as is provided by law and that this Court deems just
7 and equitable.

8 Respectfully submitted,

9 BLACK LOWE & GRAHAM^{PLLC}

10
11 Dated _____

12 By: _____
13 Michael J. Folise, WSBA #15,276
14 701 Fifth Avenue, Suite 4800
15 Seattle, Washington 98104
16 Phone (206) 381-3300
17 Fax (206) 381-3301

18 Dated _____

19 By: _____
20 Lawrence D. Graham, WSBA #25,402
21 701 Fifth Avenue, Suite 4800
22 Seattle, Washington 98104
23 Phone (206) 381-3300
24 Fax (206) 381-3301

25 Counsel for Plaintiff
26

ahtnamas04

Samantha Rabbit

Favorite Music: uplifting/melodic trance

Last Online: 8.12.2008 4:13 am

Join Date: February 2008

Location: unfortunately Orange County

Posts: 137



Re: Rabbitlights.com may be getting shut down and/or sued...

Quote:

Originally Posted by racinghart

hi samantha... its me aaron from orbitlightshow.com...

looks like the big guys are always picking on us little people again. i got the same lawsuit/threat sent to my mailbox the other day saying the same thing (of course like i told you before they shut down my ebay account for awhile because i had lights for sale on there as well) but now they are at it again....

they want me to pay them and take down my website?!?

they are such freakin bastards. our lights arent even the same. they think they are but they have no idea.

Aaron

Well, as bad as this shit sounds, at least it isn't just me. I was beginning to think the crap was all fabricated and that somebody really just hates me. I guess if its others... well... yeah. We'll see if it hits any of the Bigger Companies selling the same things we do.... because if not, that would be LAME.

I can't really comment on my current state of 'talks' with them... I advise you to do what I did though... find a friend / family who is also a lawyer. If they want me to pay them, it's next to impossible... I've hardly even made back all the costs of starting. That, plus tuition and medical bills... yeah.

I'm certainly humbled by them thinking I'm some massive, successful cooperation though, and not a legally impoverished kid selling lights out of a 400 square foot studio shared by somebody else... haha!

I like how they don't even know what our lights are like...

Different cases. Different switch. Different battery cage. Different DESIGN, different LED, different functionality.

Greed, the #1 force behind America!

Speaking for myself, and only myself, I'm hoping that they realize that I MAKE next to nothing, and that this is nothing but a huge waste of their time and energy. And speaking for both of us, here's to hoping they GET THAT and go after the people who are making thousands a day. E.G. NOT US.

Here's to punishment for having navigable websites. Cheers.

And for the record... I'm still up... so yeah

This whole thing isn't very PLUR... and they aren't suing INOVA...

I have a link TO PHOTON'S WEBSITE as a gesture of goodwill and soon enough I'll be selling LRI products side by side with mine... so as far as being accused of 'counterfeiting' goes, it's BS.

If I were saying 'look these are Photons!' when they aren't, would I have a DISCLAIMER ON EVERY PAGE or a LINK TO PHOTONLIGHT.COM on my website? No sir. I've done nothing but cooperate with them. So they should get their efforts off me and put it where it matters most to them -- the websites ACTUALLY MAKING A LOT OF MONEY OFF THESE LIGHTS -- if we get taken down, it's only fair to assume they should too.

All our lights are are a similar alternative to Photon lights. They aren't "fakes" and they aren't the same -- it's pretty damned easy to tell that when you hold a photon in your left hand and one of our microlights in the right. If you don't want to pay \$15 for a light when you don't need it to dim or when you want something cheaper that makes a solid beam of light, you get these. They aren't suing INOVA, and their lights are similar too. Plus INOVA are way nicer and far easier to deal with, as a company. I've given Photon the information they asked for, there's nothing else I can do.

Last edited by ahtnamas04; 28.8.2008 at 7:47 pm.. Reason: automerged doublepost

ATTACHMENT 1-A

Quote

16.9.2008, 12:52 am

#45

jrnookiemonster

Member

Favorite Music: House

Last Online: 1.12.2008 10:08 am

Join Date: September 2008

Location: Oceanside, SoCal right on the beach

Posts: 50

Re: Rabbitlights.com may be getting shut down and/or sued...

Fuck Photon. Don't reply to the faggot publicly asking if you're the owner of rabbit lights. If he was going to help, he'd contact you privately. And as for them suing you, destroy every record of everything sold or that you've bought. Sell your computer and buy a new one. Create new online accounts. Only sell your lights at parties and via hand mail. Do not deposit checks/ money orders! Cash them. Put anything you own, car, house, club stereo, vending booth in your mom/ brother/ sister/ cousins name. Make sure you trust them! Don't leave a trace. Publicly denounce Photon on your sight, post the letter they sent you on the home page. Send them a response saying that the product you carried was a test run and state that very few had been sold yet and that you will fully comply with their request. Ask which products are supposedly in violation of their patent. This ought to buy you the time you need to get rid of any evidence. If you use a bank account, close it. Open two new ones. Find a friend to "sell" all remaining stock from your copy write infringing business for fair market value, maybe \$100 or so. (Don't actually sell the stuff) You just need the bill of sale for everything and include in the bill of sale that the sale of items are for personal use and not for resale. Deposit that \$100 in the new account. If you ever go to court. Bring the bill of sale and the bank statement. Plead your case as innocent and 100% compliant once you were notified by big bad The Photon Company. They need evidence to the contrary. This is america! Rave on...

Oh, my email **[Only registered and activated users can see links. Click HERE To Register...]** and my phone number if you need it 760-889-4625 seriously, hit me up if you need anything. Jay

Previous

Post Reply

Page 4 of 4 < First < 2 3 4 >

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Current Bid: \$24.98

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 Music Videos

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Untitled

Aaron

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Untitled

Fuck Photon. Don't reply to the faggot publicly asking if you're the owner of rabbit lights. If he was going to help, he'd contact you privately. And as for them suing you, destroy every record of everything sold or that you've bought. Sell your computer and buy a new one. Create new online accounts. Only sell your lights at parties and via hand mail. Do not deposit checks/ money orders! Cash them. Put anything you own, car, house, club stereo, vending booth in your mom/ brother/ sister/ cousins name. Make sure you trust them! Don't leave a trace. Publicly denounce Photon on your sight, post the letter they sent you on the home page. Send them a response saying that the product you carried was a test run and state that very few had been sold yet and that you will fully comply with their request. Ask which products are supposedly in violation of their patent. This ought to buy you the time you need to get rid of any evidence. If you use a bank account, close it. Open two new ones. Find a friend to "sell" all remaining stock from your copy write infringing business for fair market value, maybe \$100 or so. (Don't actually sell the stuff) You just need the bill of sale for everything and include in the bill of sale that the sale of items are for personal use and not for resale. Deposit that \$100 in the new account. If you ever go to court. Bring the bill of sale and the bank statement. Plead your case as innocent and 100% compliant once you were notified by big bad The Photon Company. They need evidence to the contrary. This is america! Rave on... Oh, my email [Only registered and activated users can see links.] and my phone number if you need it 760-889-4625 seriously, hit me up if you need anything. Jay

No, but can I get at that?



This message is too short so I'm entering more characters

12.8.2008, 12:46 am

#41

Juno

RaveLink's Owner

Favorite Music: Downtempo, techno.

Last Online: Today 4:14 pm
Join Date: April 2006
Location: Anaheim
Posts: 7,706



Re: Rabbitlights.com may be getting shut down and/or sued...

Quote:

Originally Posted by **ahtnamas04**

Σ(O_O)

This message is too short so I'm entering more characters

That wasn't a no, so I'll take it.

12.8.2008, 1:56 am

#42

Butters89

Senior Member

Favorite Music: Rock(any) HardStyle

Last Online: Today 2:56 am
Join Date: March 2008
Location: North Hollywood
Posts: 833



Re: Rabbitlights.com may be getting shut down and/or sued...

Juno wins again!

+3 1/3

23.8.2008, 9:51 pm

#43

racinghart

Member

Favorite Music: trance

Last Online: 31.12.2008 5:38 am
Join Date: November 2007
Posts: 43



Re: Rabbitlights.com may be getting shut down and/or sued...

hi samantha... its me aaron from orbitlightshow.com...

looks like the big guys are always picking on us little people again. i got the same lawsuit/threat sent to my mailbox the other day saying the same thing (of course like i told you before they shut down my ebay account for awhile because i had lights for sale on there as well) but now they are at it again....

they want me to pay them and take down my website!?

they are such freakin bastards. our lights arent even the same. they think they are but they have no idea.

quote

28.8.2008, 7:25 pm

#44

ATTACHMENT 1-C

All times are GMT -4. The time now is 4:14 pm.

-- English (US)

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769 770 771 772 773

EXHIBIT E

U.S. Patent

Nov. 5, 1996

Des. 375,372

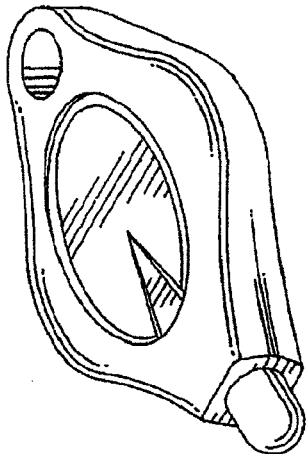


Fig.1

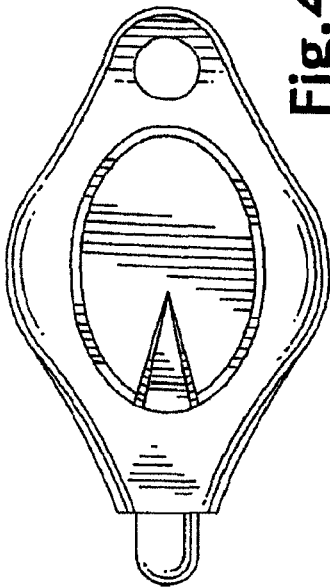


Fig.4



Fig.3

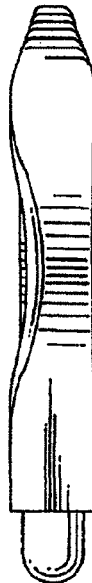


Fig.2

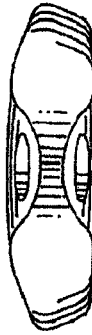


Fig.5

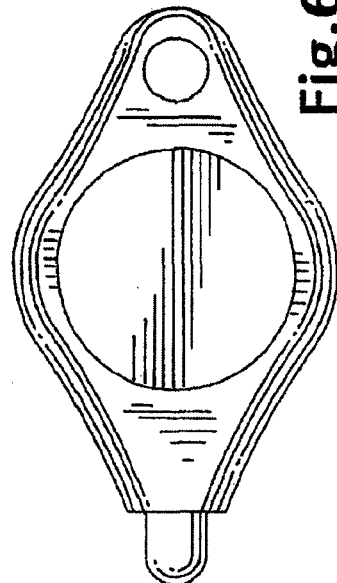


Fig.6

US00D375372S

United States Patent [19]

Allen

[11] **Patent Number:** Des. 375,372[45] **Date of Patent:** **Nov. 5, 1996[54] **POCKET FLASHLIGHT**[76] **Inventor:** David M. Allen, P.O. Box 34, Blachly, Oreg. 97412-0034[**] **Term:** 14 Years[21] **Appl. No.:** 36,484[22] **Filed:** Mar. 21, 1995[52] **U.S. Cl.** D26/37[58] **Field of Search** D26/37, 38, 46;
362/157, 158, 183, 186, 201, 202, 189,
103, 108, 109[56] **References Cited****U.S. PATENT DOCUMENTS**

D. 313,662	1/1991	Caires	.....	D26/37
D. 359,370	6/1995	Tabor	.....	D26/37
D. 361,633	8/1995	Chabria	.....	D26/37
D. 366,721	1/1996	Borden	.....	D26/37

1,866,600	7/1932	Rauch	.....	362/189
2,528,701	11/1950	Mitchell	.....	D26/37

Primary Examiner—Marcus A. Jackson
Attorney, Agent, or Firm—Edward B. Watters

[57] **CLAIM**

The ornamental design for a pocket flashlight, as shown and described.

DESCRIPTION

FIG. 1 is a front, right-side, and top perspective view of a pocket flashlight showing my new design;
 FIG. 2 is a right-side elevational view thereof, the left-side elevational view being a mirror image of that shown;
 FIG. 3 is a front view thereof;
 FIG. 4 is a top plan view thereof;
 FIG. 5 is a rear view thereof; and,
 FIG. 6 is a bottom plan view thereof.

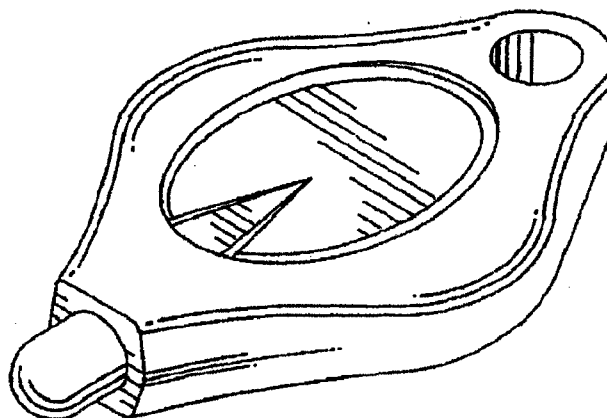
1 Claim, 1 Drawing Sheet

EXHIBIT F

The United States of America



**CERTIFICATE OF REGISTRATION
PRINCIPAL REGISTER**

The Mark shown in this certificate has been registered in the United States Patent and Trademark Office to the named registrant.

The records of the United States Patent and Trademark Office show that an application for registration of the Mark shown in this Certificate was filed in the Office; that the application was examined and determined to be in compliance with the requirements of the law and with the regulations prescribed by the Director of the United States Patent and Trademark Office; and that the Applicant is entitled to registration of the Mark under the Trademark Act of 1946, as Amended.

A copy of the Mark and pertinent data from the application are part of this certificate.

This registration shall remain in force for TEN (10) years, unless terminated earlier as provided by law, and subject to compliance with the provisions of Section 8 of the Trademark Act of 1946, as Amended.



Director of the United States Patent and Trademark Office

Int. Cl.: 11

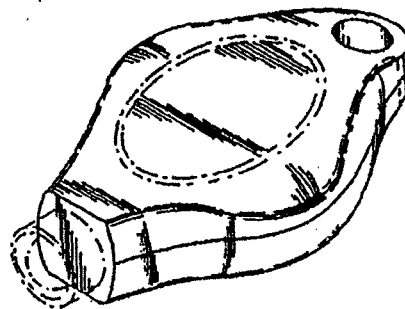
Prior U.S. Cls.: 13, 21, 23, 31 and 34

United States Patent and Trademark Office

Reg. No. 2,791,033

Registered Dec. 9, 2003

**TRADEMARK
PRINCIPAL REGISTER**



ALLEN, DAVID (UNITED STATES INDIVIDUAL)
93890 POPE ROAD
BLACHLY, WA 97412

FOR: BATTERY OPERATED PORTABLE ELECTRIC LIGHTS, IN CLASS 11 (U.S. CLS. 13, 21, 23, 31 AND 34).

FIRST USE 10-0-1994; IN COMMERCE 10-0-1994.

THE LINING IN THE DRAWING IS FOR SHADING PURPOSES ONLY AND IS NOT A PART OF THE MARK

THE MARK CONSISTS OF THE EXTERNAL APPEARANCE OF A PERSONAL LIGHTING DEVICE HAVING A SUBSTANTIALLY DIAMOND SHAPED MAIN BODY IN TOP PLAN VIEW, CONSISTING OF MAJOR AND MINOR AXES, CONSISTING FURTHER OF WING-SHAPED APPURTENANCES ON EACH LATERAL SIDE OF THE MAJOR AXIS OF THE MAIN BODY CENTERED ABOUT THE MINOR AXIS OF THE MAIN BODY

SER. NO. 78-028,887, FILED 10-3-2000.

LYNN A. LUTHEY, EXAMINING ATTORNEY

Int. Cl.: 11

Prior U.S. Cls.: 13, 21, 23, 31 and 34

Reg. No. 2,791,033

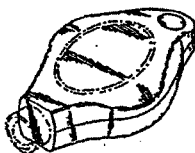
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Corrected

OG Date Sep. 21, 2004

TRADEMARK
PRINCIPAL REGISTER



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In testimony whereof I have hereunto set my hand and caused the seal of The Patent and Trademark Office to be affixed on Sep. 21, 2004.

DIRECTOR OF THE U.S. PATENT AND TRADEMARK OFFICE

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